



**City Council Agenda Report**  
**Meeting Date:** July 17, 2012  
**Department:** Management Services

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**SUBJECT:**

CITY MANAGER EMPLOYMENT AGREEMENT

**RECOMMENDED ACTION(S):**

Approve the First Amendment to the City Manager Agreement for Employment and authorize the Mayor to execute and the City Clerk to attest the document.

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**EXECUTIVE SUMMARY:**

The City Council recently completed its annual performance evaluation of Robert C. Dunek, Lake Forest's City Manager since 1995. The attached First Amendment changes Section 2 of the City Manager Agreement for Employment to increase Mr. Dunek's base salary by \$8,200 to \$240,656 (Attachment 1). Mr. Dunek's additional compensation and benefits remain the same, as do the contract's description of duties, term and other conditions of employment (Attachment 2). Mr. Dunek contributes 7% of his salary toward retirement benefits, as do all full-time City employees. Similarly, all employees, including Mr. Dunek, received net-zero salary increases the last two fiscal years.

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**FISCAL IMPACT:**

Effective July 9, 2012, the Amendment provides for a salary increase of \$8,200 to an annual salary of \$240,656.

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**ATTACHMENTS:**

1. First Amendment
2. City Manager Agreement for Employment

Submitted By: Scott C. Smith, City Attorney  
Reviewed By: Robert C. Dunek, City Manager

# ATTACHMENT 1

## **FIRST AMENDMENT TO AGREEMENT FOR EMPLOYMENT CITY MANAGER**

This First Amendment to the "Agreement for Employment, City Manager" is made and entered into between Robert C. Dunek, hereinafter referred to as "Dunek," and the City of Lake Forest, a California general law municipal corporation of the State of California, hereinafter referred to as "City," in order to modify, in writing, the terms and conditions of the employment of Dunek by the City.

WHEREAS, the City and Dunek entered into an "Agreement for Employment, City Manager" dated September 6, 2011, which was effective on July 1, 2011, hereinafter referred to as the "Employment Agreement;" and

WHEREAS, Section 2(B) of the Employment Agreement provides, in part, that the City may increase Dunek's base salary by written amendment to the Employment Agreement; and

WHEREAS, the City Council has concluded its annual evaluation of Dunek; and

WHEREAS, as a result of the evaluation, the City and Dunek desire to amend Section 2A of the Employment Agreement related to Base Salary as set forth herein.

NOW THEREFORE, IT IS HEREBY AGREED as follows:

### **1. Amendment of Employment Agreement**

The City and Dunek mutually desire to amend Section 2A of the Employment Agreement in its entirety as follows:

"A. Effective July 9, 2012, the City shall pay Manager an annual Base Salary of two hundred forty thousand six hundred and fifty-six dollars (\$240,656) in installments at the same time as other executive management employees (department heads) of City are paid."

### **2. Severability**

If any provision of this First Amendment to the Employment Agreement shall be held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision of this First Amendment unless elimination of such provision materially alters the rights and obligations set forth herein.

### **3. Effect on Employment Agreement**

This First Amendment to the Employment Agreement shall affect only the sections referred to herein, and all other terms and conditions of the Employment Agreement between the City and Dunek shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the \_\_\_\_ day of \_\_\_\_, 2012.

CITY OF LAKE FOREST:

ROBERT C. DUNEK:

\_\_\_\_\_  
Kathryn McCullough  
Mayor

\_\_\_\_\_  
Robert C. Dunek  
City Manager

ATTEST:

\_\_\_\_\_  
Stephanie D. Smith, CMC  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Scott C. Smith, City Attorney

# ATTACHMENT 2

**AGREEMENT FOR EMPLOYMENT  
CITY MANAGER**

THIS AGREEMENT is made and entered into this 6<sup>th</sup> day of September 2011, effective July 1, 2011 except as specifically provided herein, by and between the City of Lake Forest, a California general law municipal corporation of the State of California, hereinafter referred to as "City" and Robert C. Dunek, hereinafter referred to as "Manager."

**WITNESSETH**

WHEREAS, the City Council of the City of Lake Forest appointed Robert C. Dunek as City Manager of the City of Lake Forest, by Resolution 95-70 adopted on December 19, 1995; and

WHEREAS, the City desires to continue to employ the services of Robert C. Dunek as City Manager of the City of Lake Forest as provided by the Lake Forest Municipal Code and State law; and

WHEREAS, it is the desire of the City Council of the City of Lake Forest to provide certain benefits, and establish certain conditions of employment of Manager; and

WHEREAS, Robert C. Dunek desires to accept continued employment as the City Manager of the City of Lake Forest, and to accept the provisions of this Employment Agreement.

NOW, THEREFORE, in consideration of the respective and mutual covenants hereinafter contained and made, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and agreed, and subject to all the terms and conditions hereof, City and Manager agree as follows:

**Section 1: Appointment and Duties**

A. The City Council of the City of Lake Forest has hereby appointed Robert C. Dunek as City Manager of the City of Lake Forest to perform those functions and duties specified in the Lake Forest Municipal Code, and the Government Code of the State of California, and to perform such other legally permissible and proper duties and functions as the City Council shall from time to time assign.

B. Manager agrees to remain in the exclusive employ of City until this agreement is terminated by City or Manager as provided herein. The term "employed" shall not be construed to include teaching, writing, consulting, or pursuing other vocational interests performed outside of normal business hours which may occasionally pay a stipend or wage, and which do not interfere with the performance of the duties of City Manager or constitute a conflict of interest under applicable law.

## **Section 2: Compensation**

A. Effective July 1, 2011, the City shall pay Manager an annual Base Salary of two hundred twenty-four thousand five hundred and ninety-five dollars (\$224,595) in installments at the same time as other executive management employees (department heads) of City are paid. Effective December 23, 2011, the City shall pay Manager an annual Base Salary of two hundred thirty-two thousand four hundred and fifty-six dollars (\$232,456).

B. City, from time to time, may increase Manager's Base Salary by written amendment to this Agreement.

C. In addition to the Base Salary set forth above, Manager's compensation shall include a performance-based incentive for continued outstanding performance. Manager may receive up to twelve thousand dollars (\$12,000) per fiscal year for each year this Agreement is in effect as an incentive for continued outstanding performance as determined by the City Council. Such incentive shall not become part of Manager's Base Salary. Such incentive, if any, shall be determined concurrent with the annual performance evaluation by the City Council conducted pursuant to Section 7, below and paid in July of that same year.

D. Effective July 1, 2011, City shall provide Manager an automobile allowance in the amount of five hundred eighty-seven dollars and seventy-five cents (\$587.75) per month, with an annual increase commencing on July 1, 2012 and on each July 1st thereafter by the annual percentage increase in the Consumer Price Index ("CPI") for the area that includes the City of Lake Forest. The calculation of the percentage increase shall be based on data from the immediately preceding April to April period. For example, the car allowance increase effective on July 1, 2012, shall be based on the increase in the CPI from April 2011 to April 2012. Under no circumstances shall the monthly car allowance be decreased. City shall and pay Manager a cell phone allowance of \$100 per month.

E. Manager shall be entitled to the same holidays, sick leave, executive leave and buyback, annual physical, and long-term disability benefits, insurance benefits including, but not limited to, life, health, vision, and dental coverages, and vacation buy-back as provided other executive management employees (department heads) within the City's employ in effect as of the date of this Agreement and as they may be changed from time to time by City. Manager shall be entitled to receive a vacation leave cap of 300 hours.

F. City shall provide Manager with two hundred fifty thousand dollars (\$250,000) of life insurance, the policy for which to be selected, paid, and maintained by City for the term of this Agreement. Manager shall have the sole right to name the beneficiary or beneficiaries of said policy.

G. City shall maintain Manager's enrollment in the Public Employee Retirement System of the State of California, and shall pay, in addition to City's share of said plan, the Manager's contribution to such retirement system pursuant to the City's agreement with PERS.

H. City shall pay all costs to maintain the Section 401(a) qualified retirement plan City previously established and funded on Manager's behalf.

I. Except as otherwise set forth in this Agreement, in addition to the benefits specified in subparagraphs A through H herein above, Manager shall receive any and all employee benefits otherwise accorded City's executive management employees (department heads) who are miscellaneous members of the California Public Employees Retirement System, and as those benefits may be changed from time to time.

J. City shall include all benefits to Manager due hereunder during any fiscal year of City in its annual budget for such year and to make the necessary annual appropriations for all such benefits.

### **Section 3: Term; Notice of Termination; and Severance**

A. Term and Extension. The term of this Agreement shall be from July 1, 2011 through June 30, 2014, unless extended or terminated as provided herein. On June 30, 2012, and on each succeeding June 30th while this Agreement is in effect, this Agreement shall be automatically extended for one additional year (i.e., in 2012 the Term of this Agreement shall be extended until June 30, 2015, in 2013 the Term of this Agreement shall be extended until June 30, 2016, and so on) unless prior to such date by a majority vote of the entire City Council in attendance at any lawfully called meeting, the City Council declares its intention not to extend this Agreement for one additional year.<sup>1</sup> Any such decision by the

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<sup>1</sup> For purposes of this Agreement, the "entire" City Council for purposes of determining a "majority" shall be based upon those seats which are filled at the time a decision is made. For example, if all five seats



City Council not to extend the Term by one additional year shall not constitute a termination for purposes of Paragraph C of this Section.

B. Notice of Termination. Manager serves at the pleasure of the City Council and City reserves the right to terminate Manager and this Agreement upon the vote of a majority of the entire City Council in attendance at any lawfully called meeting. In such event, the term extension set forth in Paragraph A above shall not apply. In any event, City shall provide Manager with not less than thirty (30) days' notice of its decision to terminate this Agreement, and as provided by the provisions of the Ralph M. Brown Act, California Government Code Section 54950 et seq. Due to the important nature of Manager's duties to the City, if Manager terminates this Agreement, Manager must provide the City Council with at least thirty (30) days' prior written notice to the date he ceases to perform his duties and responsibilities under this Agreement and the provisions of the City's Municipal Code. However, during the ninety (90) day period immediately preceding or following the date of a regular or special municipal election, City shall take no action, whether immediate or prospective, to remove, suspend, terminate, request the resignation of, or reduce the Base Salary and benefits of Manager. City acknowledges that this period is longer than that specified in the Lake Forest Municipal Code, but provides said period nevertheless as an additional inducement for Manager to enter into this Agreement.

C. Termination without Cause. In the event Manager is terminated other than for cause or disability by a majority vote of the entire City Council in attendance at any lawfully called meeting, City shall provide Manager with severance pay equal to six (6) months Base Salary and six months of medical and other health related insurance coverage ("Severance Compensation"). Additionally, Manager shall be entitled to one additional month of Severance Compensation for every five (5) years of service, except to the extent the additional Severance Compensation is limited by State law. Manager shall be compensated for any unused leave, holidays, and other benefits then accrued. Should Manager die before receiving all Severance Compensation provided for under this agreement, such payment shall be paid and provided to Manager's heirs, administrators, representatives, or executors as provided by law.

D. Termination for Cause. In the event Manager is terminated because of his conviction of a felony which is likely to have a material adverse impact on City or Manager's reputation, City shall have no obligation to pay the Severance Compensation as set forth in subparagraph C, above.

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are filled, a majority of the "entire" City Council is three. If four seats are filled, a majority is still three. If only three seats are filled, a majority is two.

E. Termination for Good Reason. If at any time during the term of this Agreement, City reduces the salary or other financial benefits of Manager in an average (mean) percentage greater than that of other executive management employees (department heads) within City's employ, or in the event City refuses, following written notice, to comply with any provision benefiting Manager herein, or Manager resigns following a request that he resign made by a majority of the entire City Council in attendance at a lawfully called meeting, then Manager shall be deemed to be "terminated" as of the date of such reduction, refusal, or request within the meaning and context of Section 3.C herein.

F. Termination Based on Disability. In the event Manager is permanently disabled or is otherwise unable to perform his duties because of sickness, accident, injury, mental incapacity, or health reasons for a period of three consecutive months beyond any provided sick leave, the City may terminate this Agreement upon passage of those three consecutive months. Upon termination of the Agreement for the reasons stated in this paragraph, City shall provide the Manager Severance Pay as provided in Section 3.C. The amount of Severance Compensation shall be reduced by an amount equal to any disability insurance proceeds then being received by Manager from any policy provided by City.

#### **Section 4: Professional Development**

City agrees to pay for the professional dues, subscriptions, and other costs of Manager deemed necessary for his participation in national, state, regional, and local associations and organizations and in meetings, conferences, and training related thereto, including, but not limited to, the International City/County Management Association, the California City Management Foundation, the League of California Cities, and the Orange County City Managers' Association, which are considered mutually desirable for his continued professional participation and growth and are for the good of City. The Manager's attendance at the annual conference of the International City/County Management Association shall be subject to the annual budgetary approval of the City Council.

#### **Section 5: General Expenses**

City recognizes and agrees to pay the job-related expenses incurred by Manager in the course of his duties as approved by the City Council.

#### **Section 6: Indemnification**

City agrees to defend, hold harmless, and indemnify Manager against any tort, professional liability claims or demand, or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring within the scope and course of the performance of Manager's duties.

## **Section 7: Performance Review**

City Council agrees to provide, prepare, and participate in reviews of Manager's performance. The objective of such review shall be to maintain an optimal working relationship and a mutual understanding and agreement on duties, responsibilities, and priorities between Manager and the City Council. The City Council shall conduct such review at least annually at a City Council meeting or meetings beginning in April and concluding no later than June 30 of each year. The parties shall work in good faith to timely provide each other the relevant background information, evaluation criteria and feedback necessary for the performance evaluation and to complete the performance evaluation process within the timeframes set forth herein.

## **Section 8: Bonding Requirements**

City shall bear full cost of the fidelity bond required of the Manager under the Lake Forest Municipal Code or State law.

## **Section 9: Other Terms and Conditions**

A. This Agreement shall be binding upon and shall inure to the benefit of the respective heirs, executors, administrators, successors, and assigns of the parties provided, however, Manager may not assign Manager's obligations hereunder.

B. No provision of this Agreement may be modified, waived, or discharged unless such waiver, modification, or discharge is agreed to in writing by City and Manager. No waiver by either party at any time or the breach of, or lack of compliance with, any conditions or provisions of this Agreement shall be deemed a waiver of other provisions or conditions hereof.

C. The text herein shall constitute the entire agreement between the parties and shall supersede any and all previous agreements and understandings of the parties except as otherwise provided in this Agreement.

D. Should either party commence legal action or proceeding against the other based upon this Agreement, the prevailing party shall be entitled to an award of reasonable attorney's fees.

## **Section 10: Severability**

If any provision, or portions thereof, contained in this Agreement is held unconstitutional, invalid, or unenforceable, the remainder of this Agreement, or portion thereof, shall be deemed severable and shall remain in full force and effect.

## **Section 11: Notices**

A. Notices pursuant to this Agreement shall be given by personal service or deposit in the custody of the United States Postal Service, postage prepaid, addressed as follows:

(1) City of Lake Forest  
25550 Commercentre Drive, Suite 100  
Lake Forest, California 92630

(2) Manager, Robert C. Dunek  
25550 Commercentre Drive, Suite 100  
Lake Forest, California 92630

B. Notices also may be personally served in the same manner as is applicable to civil judicial practice.

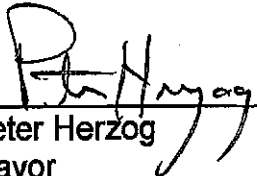
C. Notice shall be deemed given as of the date of personal service or as of the date of deposit of such written notice in the course of transmission by the United States Postal Service.

D. Either party hereto may change its respective address of record by providing written notice thereof in accordance with this Section.

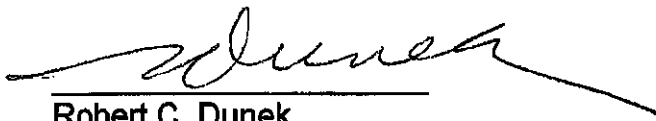
[SIGNATURES ON PAGE 8]

IN WITNESS WHEREOF, the parties have executed this Agreement the date and year first above written.

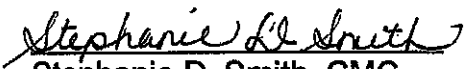
CITY OF LAKE FOREST

  
Peter Herzog  
Mayor

MANAGER

  
Robert C. Dunek  
City Manager

ATTEST:

  
Stephanie D. Smith, CMC  
City Clerk

APPROVED AS TO FORM:

  
Best Best & Krieger LLP  
City Attorney

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